

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203

RSA-198-1995 (O&M)

Date of Decision : 08.11.2017

Gurmail Singh

..... Appellant

Versus

Punjab State Civil Supplies Corporation Ltd.

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. P.S. Khurana, Advocate
for the appellant.

Mr. Arjun Sharma, Advocate
for Mr. A.R. Takkar, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the courts below dismissing the suit filed by the appellant.

The appellant was working as an Inspector in the respondent-Punsup, Patiala. He was placed under suspension by the Managing Director on 26.10.1984 and thereafter he was charge-sheeted vide order dated 26.04.1985 under the Punjab Civil Services (Punishment and Appeal

Rules), 1970 for misappropriation of wheat and loss during shortage etc. He was also criminally charged for the same offences. During the inquiry proceedings he did not lead any evidence. The inquiry officer submitted a report and finding him guilty of charges No.1 and 3 a show-cause notice was issued to him. The appellant challenged the same by way of a civil suit primarily on the ground that he had not been allowed to lead evidence. During the pendency of the civil suit, the respondent appointed another inquiry officer so as to enable the appellant to lead his evidence. The appellant led his evidence but thereupon the matter was taken up by the punishing authority and the impugned order of dismissal was passed. Both the courts below held the impugned order to be valid and dismissed the suit.

Counsel for the appellant has argued that the second inquiry officer was enjoined to reconsider the entire issue after keeping in view the evidence led by the appellant and to thereafter submit a report to the punishing authority. The punishing authority was in turn bound to furnish a copy of the report to the appellant to give his comments. Thereafter the punishing authority should have considered the report alongwith comments of the appellant and then to give him a fresh show-cause notice and only after the response of the appellant, the punishment order could have been passed. However, in the present case the second inquiry officer just recorded the evidence and sent the matter to the punishing authority without giving a report. The punishing authority did not issue any show-cause notice and straightway passed the impugned order of punishment.

Counsel for the respondent is not in a position to deny these

factual aspects.

In my opinion, the appeal has to be allowed. There is no gainsaying that the punishing authority can himself inquire into the matter but in that situation it is incumbent upon the punishing authority to first pass an order regarding the guilt or otherwise and to then furnish a copy of that to the delinquent so that a delinquent can make a representation against it. It is only after considering that representation that the punishing authority would issue a show-cause notice to allow the delinquent to show-cause why a lesser punishment should be imposed, and then to pass an order. Both the courts below have erred in not considering these fundamental attributes of fair play which have not been met in the present case. In this view of the matter, the impugned order of dismissal has to be set aside. However, that would not result in consequential benefits to the appellant at this stage.

Consequently, the impugned judgments are set aside and the impugned order of dismissal is also set aside. The punishing authority would either appoint a fresh inquiry officer or may himself consider the entire material (i.e. the evidence against the appellant and the evidence led by him) and then proceed as per law. The appellant is stated to be a senior citizen now. In the circumstances, let the proceedings be now finalized within a period of 6 months from the date of receipt of a certified copy of this order subject to the appellant cooperating with the same. In case the proceedings are not finalized within the aforesaid period and the delay is not attributable to the appellant, he would be entitled to costs of Rs.10,000/- per month till such time the proceedings are finalized.

Appeal stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

November 08, 2017
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No